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February 23, 1996

Michele C. Farquhar, Esquire
Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W.
Room 5002
Washington, D.C. 20554

Re: Entrepreneurs' Block (Block C) Auction, PP Docket 93-253 --
Request for Waiver Concerning Audited Financial Statements --
EXPEDITED ACTION REQUESTED

Dear Ms. Farquhar:

On behalf of GO Communications Corporation (GO") and its wholly-owned subsidiary, GO Telecommunications Corporation I ("GTC" or the "Applicant"), an applicant in the FCC's Entrepreneurs' Block (Block C) personal communication service ("PCS") auction now underway, the undersigned hereby requests a ruling by the Wireless Telecommunications Bureau waiving for all Entrepreneurs' Block applicants the requirement that a determination of the gross revenues and total assets of an applicant's investors or affiliates, or the affiliates of an applicant's investors, for the purposes of long-form applications, be based upon "audited financial statements" in circumstances where existing audited financial statements are unavailable.^{1/} The "audited financial statement" requirement imposes profound hardships upon the entrepreneurial small businesses that constitute all of the applicants in the Entrepreneurs' Block and a significant segment of their attributable investors. Accordingly, we request that the Commission permit all applicants in the C Block auction to rely upon financial statements certified by a responsible corporate officer to be accurate for affiliated companies that do not now have audited financial statements available to them.

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1/ The instant request joins the pending request for an identical waiver filed by the law firm of Covington & Burling on behalf of a group of investors in PCS C Block applicants. See letter from Jonathan D. Blake, Esquire and Kurt A. Wimmer, Esquire, Covington & Burling, to Kathleen O'Brien Ham, Chief, Auctions Division, Wireless Telecommunications Bureau, FCC (January 26, 1996) (Request for Waiver Concerning Audited Financial Statements) [hereinafter "*Covington & Burling Letter*"].

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The requested waiver pertains to a matter affecting all or most C Block applicants. Indeed, many Entrepreneurs' Block applicants have already sought identical waivers on an individual basis, while others are likely to file such requests shortly before long-form applications (FCC Form 600) become due.^{2/} The fact that the C Block auction has entered its third month, coupled with the short span of time available to prepare long-form applications following the close of the auction, makes prompt action by the staff critical. Accordingly, we further request expedited disposition of this matter.

As a general matter, the Commission's rules require that gross revenues and total assets be determined on the basis of "audited financial statements." 47 C.F.R. §§ 24.720(f), 24.720(g) (1994). However, where an entity "was not in existence for all or part of the relevant period" and "there is no identifiable predecessor-in-interest," the Commission does allow reliance on unaudited financial statements, provided they are certified as accurate by the applicant. 47 C.F.R. § 24.720(f).

While audited financial statements may constitute the ideal basis to evaluate the accuracy of the gross revenues and total assets of investors and their affiliates, they certainly are not indispensable, and they do not constitute the only safeguard available to the agency. Where other assurances of reliability are present, the Commission should weigh the need for audited financial statements against the burden the requirement would impose upon the applicant, its investors and affiliates and conclude that a waiver is appropriate.

For many applicants in the Entrepreneurs' Block, and for their investors as well, compliance with the requirement for audited financial statements would entail monumental costs in time and money and would be wholly inimical to the principles underlying the creation of the Entrepreneurs' Block. By design, the Entrepreneurs' Block was structured to enlist investment and participation in PCS ventures from a host of small and medium-sized firms, and it has been successful in realizing this goal. However, unlike the larger, sometimes publicly-held entities which comprised the applicants for other auctions, and which customarily prepare audited financial statements, the small businesses and entrepreneurs that constitute the majority of investors in C Block applicants are not publicly held and often do not have the sort of commercial lender financing that requires routine preparation of audited financial statements. Imposition of the rule would require this diverse array of investor/affiliates, and the investors' affiliates to conduct innumerable accounting audits, not

^{2/} See, e.g., FCC Form 175 Applications filed by Americall International, LLC; B&P PCS, Inc.; Cyberstar, G.P.; Horsetooth Communications, Inc.; Overland Company, Inc.; Personal Communications Services, Inc.; R&S PCS, Inc.; USA Micro-Cellular, Inc.; Western Minnesota PCS Limited Partnership; Whidbey Telephone Company; Wireless PCS, Inc.; and Wireless Telecommunications Company, Inc. See also *Implementation of Section 309(j) of the Communications Act - Competitive Bidding*, FCC 95-301 at 32 n.181 (released July 18, 1995) (Sixth Report & Order in PP Docket 93-253).

for any business purpose, but purely to fulfill Commission regulations.^{3/} One of GO's investors has informed the company that the cost of performing the necessary audits to develop the financial statements necessary to comply with the FCC's rule would run into the hundreds of thousands of dollars and be extraordinarily time consuming.

Moreover, the burdens flowing from application of the audited financial statement requirement would not rest on investors alone. Because the Commission's rule make applicants ultimately responsible to submit the required statements, the rule places on each applicant the wholly untenable and impracticable obligation to police and coordinate its diverse array of investors and affiliates, as well as their affiliate or affiliates, to insure that accurate statements are produced in a timely fashion for submission to the FCC with the long-form application. The regulatory hardship inflicted by rigid adherence to this requirement would be overwhelming, and the substantial number of applicants who sought similar waivers in their short form applications suggests that this affliction would be both typical and, indeed, widespread across the industry.

Placing such an oppressive burden on applicants is especially unwarranted because audited financial statements do not provide appreciably greater assurances of reliability than financial statements which are certified as accurate by an officer of the applicant or affiliate, especially in the context of the C Block auction. As an initial matter, statements certified as accurate will carry sufficient assurances of reliability because of the use to which these statements will be put.^{4/} Applicants and their attributable investors must rely on these financial statements to demonstrate the applicant's basic eligibility to participate in the C Block and to enjoy the special advantages associated with designated entity status. Applicants that incorrectly certify their assets and revenues risk disqualifying themselves from the auction

^{3/} As Covington & Burling stated in their request for waiver:

The burden of obtaining audited financial statements falls particularly heavily upon persons who wish to invest in PCS applicants but who also have interests in other small businesses that would be considered "affiliates" of the bidder under the FCC's rules. The number of separate entities that can be considered "affiliates" of an investor under the FCC's definition of that term can be very large. Some of these entities may have no significant assets or revenues, and others may be in active operation but not generate the level of activity that normally justifies the cost of an audit. . . . Moreover, the broad definition of "affiliate" may include companies as to which particular investors may not be legally capable of effecting an audit.

Covington & Burling Letter, supra note 1, at 3 & n.4.

^{4/} Indeed, the Commission's rules acknowledge that in certain situations "unaudited financial statements certified by the applicant as accurate" present satisfactory indicia of reliability to warrant their use in lieu of audited financial statements. See 47 C.F.R. § 24.720(f) (1994).

or from other important additional benefits. Likewise, investors and affiliates that erroneously certify their assets and revenues, thereby compromising the applicant's eligibility, risk litigation and other private/contractual penalties. Accordingly, these entities will have a strong incentive to ensure that all investors and affiliates provide accurate and complete statements. Such institutional demands will ensure complete and full disclosure of assets and revenues.

Moreover, the instant request seeks a waiver only in circumstances where the applicant's investor or affiliate does not, in fact, have audited statements otherwise available. Accordingly, the requested waiver would not apply in the vast majority of cases where the requirement actually serves its intended purpose of monitoring compliance with the FCC's rules: Companies with significant assets and or revenues, as measured by the FCC's C Block criteria, are likely already to have audited financial statements as a consequence of their public status, venture capital investment, or lender requirements. Where such statements are available, applicants and their investors would still be required to use them to ascertain gross revenues and total assets. The requested waiver would apply only to entities that have not reached this size or status and thus are less likely to have assets or revenues that pose a genuine concern.

The circumstances associated with the particular class of applicants in the Entrepreneurs' Block clearly evidence a case where the grant of a waiver will serve the public interest and avoid the application of a rule in an "inequitable" and "unduly burdensome" fashion. 24 C.F.R. § 24.819(a) (1994). Requiring C Block applicants' investors to prepare and submit audited financial statements inequitably and unduly burdens both these smaller companies and the applicants themselves. Such an application of the rule would be inimical to the spirit and purpose of the Entrepreneurs' Block. Grant of the requested waiver will not impair the underlying objective of the rule because the information supplied to the Commission will be continue to be reliable: As described earlier, requiring responsible corporate officers to certify that financial statements are accurate, when combined with the powerful incentives provided by contractual and other mechanisms to ensure accuracy, will provide adequate indicia of reliability.

For these reasons, GO Communications Corporation and GO Telecommunications Corporation I request that the Wireless Telecommunications Bureau grant a general waiver of Sections 24.720(f) and 24.720(g) of the Commission's rules for purposes of the Entrepreneurs' Block auction in order to enable applicants whose investors and affiliates do not now have audited financial statements available to them to utilize unaudited financial statements certified as accurate by an officer of those entities. The staff has previously granted general waivers of certain filing requirements for all applicants in both the C Block

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and A and B Block auctions,^{5/} and a similar waiver for all applicants here would be appropriate, efficient and equitable.

Very truly yours,



Lawrence R. Sidman

Attorney for
GO Communications Corporation and
GO Telecommunications Corporation I

cc: Kathleen O'Brien Ham, Esquire
Rosalind K. Allen, Esquire
Peter A. Tenhula, Esquire
Mr. Jay Markley
Mr. Andrew Sinwell

^{5/} See, e.g., Waiver of Certain Provisions of Section 24.813 of the Commission's Rules, Order, DA 95-507 (PP Docket No. 93-253, March 22, 1995); Waiver of Section 24.813 of the Commission's Rules, DA 95-1130 (PP Docket No. 93-253, May 19, 1994).